

1-1 By: Callegari (Senate Sponsor - Jackson) H.B. No. 628  
1-2 (In the Senate - Received from the House May 13, 2011;  
1-3 May 16, 2011, read first time and referred to Committee on State  
1-4 Affairs; May 21, 2011, reported favorably by the following vote:  
1-5 Yeas 8, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to contracts by governmental entities and related  
1-9 professional services and to public works performance and payment  
1-10 bonds.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

1-13 SECTION 1.01. Section 2253.021, Government Code, is amended  
1-14 by adding Subsection (h) to read as follows:

1-15 (h) A reverse auction procedure may not be used to obtain  
1-16 services related to a public work contract for which a bond is  
1-17 required under this section. In this subsection, "reverse auction  
1-18 procedure" has the meaning assigned by Section 2155.062 or a  
1-19 procedure similar to that described by Section 2155.062.

1-20 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

1-21 SECTION 2.01. Section 11.168, Education Code, is amended to  
1-22 read as follows:

1-23 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR  
1-24 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection  
1-25 (b) or Section 45.109(a-1) or ~~and~~ (a-2), the board of trustees of  
1-26 a school district may not enter into an agreement authorizing the  
1-27 use of school district employees, property, or resources for the  
1-28 provision of materials or labor for the design, construction, or  
1-29 renovation of improvements to real property not owned or leased by  
1-30 the district.

1-31 (b) This section does not prohibit the board of trustees of  
1-32 a school district from entering into an agreement for the design,  
1-33 construction, or renovation of improvements to real property not  
1-34 owned or leased by the district if the improvements benefit real  
1-35 property owned or leased by the district. Benefits to real property  
1-36 owned or leased by the district include the design, construction,  
1-37 or renovation of highways, roads, streets, sidewalks, crosswalks,  
1-38 utilities, and drainage improvements that serve or benefit the real  
1-39 property owned or leased by the district.

1-40 SECTION 2.02. Sections 44.031(a), (b), and (f), Education  
1-41 Code, are amended to read as follows:

1-42 (a) Except as provided by this subchapter, all school  
1-43 district contracts for the purchase of goods and services, except  
1-44 contracts for the purchase of produce or vehicle fuel, valued at  
1-45 \$50,000 or more in the aggregate for each 12-month period shall be  
1-46 made by the method, of the following methods, that provides the best  
1-47 value for the district:

1-48 (1) competitive bidding for services other than  
1-49 construction services;

1-50 (2) competitive sealed proposals for services other  
1-51 than construction services;

1-52 (3) a request for proposals, for services other than  
1-53 construction services;

1-54 (4) an interlocal contract for services other than  
1-55 construction services;

1-56 (5) a method provided by Chapter 2267, Government  
1-57 Code, for construction services [a design/build contract,

1-58 ~~(6) a contract to construct, rehabilitate, alter, or~~  
1-59 ~~repair facilities that involves using a construction manager,~~

1-60 ~~(7) a job order contract for the minor construction,~~  
1-61 ~~repair, rehabilitation, or alteration of a facility];~~

1-62 (6) [(8)] the reverse auction procedure as defined by  
1-63 Section 2155.062(d), Government Code; or

1-64 (7) [(9)] the formation of a political subdivision

2-1 corporation under Section 304.001, Local Government Code.

2-2 (b) Except as provided by this subchapter, in determining to  
2-3 whom to award a contract, the district shall consider:

2-4 (1) the purchase price;

2-5 (2) the reputation of the vendor and of the vendor's  
2-6 goods or services;

2-7 (3) the quality of the vendor's goods or services;

2-8 (4) the extent to which the goods or services meet the  
2-9 district's needs;

2-10 (5) the vendor's past relationship with the district;

2-11 (6) the impact on the ability of the district to comply  
2-12 with laws and rules relating to historically underutilized  
2-13 businesses;

2-14 (7) the total long-term cost to the district to  
2-15 acquire the vendor's goods or services; ~~and~~

2-16 (8) for a contract for goods and services, other than  
2-17 goods and services related to telecommunications and information  
2-18 services, building construction and maintenance, or instructional  
2-19 materials, whether the vendor or the vendor's ultimate parent  
2-20 company or majority owner:

2-21 (A) has its principal place of business in this  
2-22 state; or

2-23 (B) employs at least 500 persons in this state;

2-24 and

2-25 (9) any other relevant factor specifically listed in  
2-26 the request for bids or proposals.

2-27 (f) This section does not apply to a contract for  
2-28 professional services rendered, including services of an  
2-29 architect, attorney, certified public accountant, engineer, or  
2-30 fiscal agent. A school district may, at its option, contract for  
2-31 professional services rendered by a financial consultant or a  
2-32 technology consultant in the manner provided by Section 2254.003,  
2-33 Government Code, in lieu of the methods provided by this section.

2-34 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is  
2-35 amended by adding Sections 44.0351 and 44.0352 to read as follows:

2-36 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the  
2-37 extent prohibited by other law and to the extent consistent with  
2-38 this subchapter, a school district may use competitive bidding to  
2-39 select a vendor as authorized by Section 44.031(a)(1).

2-40 (b) Except as provided by this subsection, Subchapter B,  
2-41 Chapter 271, Local Government Code, does not apply to a competitive  
2-42 bidding process under this subchapter. Sections 271.026,  
2-43 271.027(a), and 271.0275, Local Government Code, apply to a  
2-44 competitive bidding process under this subchapter.

2-45 (c) A school district shall award a competitively bid  
2-46 contract at the bid amount to the bidder offering the best value for  
2-47 the district. In determining the best value for the district, the  
2-48 district is not restricted to considering price alone but may  
2-49 consider any other factors stated in the selection criteria. The  
2-50 selection criteria may include the factors listed in Section  
2-51 44.031(b).

2-52 Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In  
2-53 selecting a vendor through competitive sealed proposals as  
2-54 authorized by Section 44.031(a)(2), a school district shall follow  
2-55 the procedures prescribed by this section.

2-56 (b) The district shall prepare a request for competitive  
2-57 sealed proposals that includes information that vendors may require  
2-58 to respond to the request. The district shall state in the request  
2-59 for proposals the selection criteria that will be used in selecting  
2-60 the successful offeror.

2-61 (c) The district shall receive, publicly open, and read  
2-62 aloud the names of the offerors and, if any are required to be  
2-63 stated, all prices stated in each proposal. Not later than the 45th  
2-64 day after the date on which the proposals are opened, the district  
2-65 shall evaluate and rank each proposal submitted in relation to the  
2-66 published selection criteria.

2-67 (d) The district shall select the offeror that offers the  
2-68 best value for the district based on the published selection  
2-69 criteria and on its ranking evaluation. The district shall first

3-1 attempt to negotiate a contract with the selected offeror. The  
 3-2 district may discuss with the selected offeror options for a scope  
 3-3 or time modification and any price change associated with the  
 3-4 modification. If the district is unable to negotiate a  
 3-5 satisfactory contract with the selected offeror, the district  
 3-6 shall, formally and in writing, end negotiations with that offeror  
 3-7 and proceed to the next offeror in the order of the selection  
 3-8 ranking until a contract is reached or all proposals are rejected.

3-9 (e) In determining the best value for the district, the  
 3-10 district is not restricted to considering price alone but may  
 3-11 consider any other factors stated in the selection criteria.

3-12 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is  
 3-13 amended by adding Section 44.0411 to read as follows:

3-14 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or  
 3-15 specifications is necessary after the performance of a contract is  
 3-16 begun or if it is necessary to decrease or increase the quantity of  
 3-17 work to be performed or of materials, equipment, or supplies to be  
 3-18 furnished, the district may approve change orders making the  
 3-19 changes.

3-20 (b) The total contract price may not be increased because of  
 3-21 the changes unless additional money for increased costs is approved  
 3-22 for that purpose from available money or is provided for by the  
 3-23 authorization of the issuance of time warrants.

3-24 (c) The district may grant general authority to an  
 3-25 administrative official to approve the change orders.

3-26 (d) A contract with an original contract price of \$1 million  
 3-27 or more may not be increased under this section by more than 25  
 3-28 percent. If a change order for a contract with an original contract  
 3-29 price of less than \$1 million increases the contract amount to \$1  
 3-30 million or more, the total of the subsequent change orders may not  
 3-31 increase the revised contract amount by more than 25 percent of the  
 3-32 original contract price.

3-33 SECTION 2.05. Subchapter A, Chapter 46, Education Code, is  
 3-34 amended by adding Section 46.0111 to read as follows:

3-35 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,  
 3-36 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL  
 3-37 FACILITY. (a) In this section:

3-38 (1) "Net proceeds" means the difference between the  
 3-39 amount recovered by or on behalf of a school district in an action,  
 3-40 by settlement or otherwise, and the legal fees and litigation costs  
 3-41 incurred by the district in prosecuting the action.

3-42 (2) "State's share" means an amount equal to the  
 3-43 district's net proceeds from the recovery multiplied by a  
 3-44 percentage determined by dividing the amount of state assistance  
 3-45 under this subchapter used to pay the principal of and interest on  
 3-46 bonds issued in connection with the instructional facility that is  
 3-47 the subject of the action by the total amount of principal and  
 3-48 interest paid on the bonds as of the date of the judgment or  
 3-49 settlement.

3-50 (b) A school district that brings an action for recovery of  
 3-51 damages for the defective design, construction, renovation, or  
 3-52 improvement of an instructional facility financed by bonds  
 3-53 for which the district receives state assistance under this  
 3-54 subchapter shall provide the commissioner with written notice of  
 3-55 the action.

3-56 (c) The commissioner may join in the action on behalf of the  
 3-57 state to protect the state's share in the action.

3-58 (d) A school district shall use the net proceeds from an  
 3-59 action brought by the district for the defective design,  
 3-60 construction, renovation, or improvement of an instructional  
 3-61 facility financed by bonds for which the district receives state  
 3-62 assistance under this subchapter to repair the defective design,  
 3-63 construction, renovation, or improvement of the instructional  
 3-64 facility on which the action is brought or to replace the facility.  
 3-65 Section 46.008 applies to the repair.

3-66 (e) The state's share is state property. The school  
 3-67 district shall send to the comptroller any portion of the state's  
 3-68 share not used by the school district to repair the defective  
 3-69 design, construction, renovation, or improvement of the

4-1 instructional facility on which the action is brought or to replace  
 4-2 the facility. Section 42.258 applies to the state's share under  
 4-3 this subsection.

4-4 SECTION 2.06. Section 2155.502(c), Government Code, is  
 4-5 amended to read as follows:

4-6 (c) The commission may not list a multiple award contract on  
 4-7 a schedule developed under Subsection (a) if the goods or services  
 4-8 provided by that contract:

- 4-9 (1) are available from only one vendor;
- 4-10 (2) are telecommunications services, facilities, or  
 4-11 equipment; ~~[or]~~
- 4-12 (3) are commodity items as defined by Section  
 4-13 2157.068(a); or
- 4-14 (4) are engineering services as described by Section  
 4-15 1001.003, Occupations Code, or architectural services as described  
 4-16 by Section 1051.001, Occupations Code.

4-17 SECTION 2.07. Section 2166.2525, Government Code, is  
 4-18 amended to read as follows:

4-19 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The  
 4-20 ~~[commission shall adopt rules that determine the circumstances for~~  
 4-21 ~~use of each] method of contracting allowed under this subchapter~~  
 4-22 for design and construction services is any method provided by  
 4-23 Chapter 2267. [In developing the rules, the commission shall  
 4-24 solicit advice and comment from design and construction  
 4-25 professionals regarding the criteria the commission will use in  
 4-26 determining which contracting method is best suited for a project.]

4-27 SECTION 2.08. Subtitle F, Title 10, Government Code, is  
 4-28 amended by adding Chapter 2267 to read as follows:

4-29 CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR  
 4-30 CONSTRUCTION PROJECTS

4-31 SUBCHAPTER A. GENERAL PROVISIONS

4-32 Sec. 2267.001. DEFINITIONS. In this chapter:

- 4-33 (1) "Architect" means an individual registered as an  
 4-34 architect under Chapter 1051, Occupations Code.
- 4-35 (2) "Engineer" means an individual licensed as an  
 4-36 engineer under Chapter 1001, Occupations Code.
- 4-37 (3) "Facility" means, unless otherwise specifically  
 4-38 provided, an improvement to real property.
- 4-39 (4) "General conditions" in the context of a contract  
 4-40 for the construction, rehabilitation, alteration, or repair of a  
 4-41 facility means on-site management, administrative personnel,  
 4-42 insurance, bonds, equipment, utilities, and incidental work,  
 4-43 including minor field labor and materials.
- 4-44 (5) "General contractor" means a sole proprietorship,  
 4-45 partnership, corporation, or other legal entity that assumes the  
 4-46 risk for constructing, rehabilitating, altering, or repairing all  
 4-47 or part of a facility at the contracted price.
- 4-48 (6) "Public work contract" means a contract for  
 4-49 constructing, altering, or repairing a public building or carrying  
 4-50 out or completing any public work.

4-51 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL  
 4-52 ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public  
 4-53 work contract made by a governmental entity authorized by state law  
 4-54 to make a public work contract, including:

- 4-55 (1) a state agency as defined by Section 2151.002,  
 4-56 including the Texas Facilities Commission;
- 4-57 (2) a local government, including:
  - 4-58 (A) a county;
  - 4-59 (B) a municipality;
  - 4-60 (C) a school district;
  - 4-61 (D) any other special district or authority,  
 4-62 including a hospital district, a defense base development authority  
 4-63 established under Chapter 379B, Local Government Code, and a  
 4-64 conservation and reclamation district, including a river authority  
 4-65 or any other type of water district; and
  - 4-66 (E) any other political subdivision of this  
 4-67 state;
- 4-68 (3) a public junior college as defined by Section  
 4-69 61.003, Education Code; and

5-1 (4) a board of trustees governed by Chapter 54,  
5-2 Transportation Code.

5-3 Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW  
5-4 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this  
5-5 section, this chapter prevails over any other law relating to a  
5-6 public work contract.

5-7 (b) This chapter does not prevail over a conflicting  
5-8 provision in a law relating to contracting with a historically  
5-9 underutilized business.

5-10 (c) This chapter does not prevail over a conflicting  
5-11 provision in an ordinance or resolution passed by the governing  
5-12 body of a municipally owned electric utility in a procedure  
5-13 described by Section 252.022(c), Local Government Code, that:

5-14 (1) requires the use of competitive bidding or  
5-15 competitive sealed proposals; or

5-16 (2) prescribes a design-build procurement procedure  
5-17 that conflicts with this chapter.

5-18 (d) This chapter does not prevail over any law, rule, or  
5-19 regulation relating to competitive bidding or competitive sealed  
5-20 proposals for construction services, or to procurement of  
5-21 construction services pursuant to Section 49.273, Water Code, that  
5-22 applies to a river authority or to a conservation and reclamation  
5-23 district created under Section 59, Article XVI, Texas Constitution,  
5-24 unless the governing body of the river authority or conservation  
5-25 and reclamation district elects to permit this chapter to supersede  
5-26 the law, rule, or regulation.

5-27 (e) This chapter does not prevail over a conflicting  
5-28 provision in a regulation that prescribes procurement procedures  
5-29 for construction services that is adopted by the governing board of  
5-30 a river authority or of a conservation and reclamation district  
5-31 created pursuant to Section 59, Article XVI, Texas Constitution,  
5-32 that owns electric generation capacity in excess of 2,500  
5-33 megawatts, except with respect to Subchapter H.

5-34 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF  
5-35 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

5-36 (1) a contract entered into by the Texas Department of  
5-37 Transportation; or

5-38 (2) a project that receives money from a state or  
5-39 federal highway fund.

5-40 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER  
5-41 EDUCATION. (a) In this section, "institution of higher  
5-42 education," "public junior college," and "university system" have  
5-43 the meanings assigned by Section 61.003, Education Code.

5-44 (b) This chapter applies to a public junior college but does  
5-45 not apply to:

5-46 (1) any other institution of higher education; or

5-47 (2) a university system.

5-48 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.  
5-49 This chapter does not apply to a regional tollway authority under  
5-50 Chapter 366, Transportation Code.

5-51 Sec. 2267.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT  
5-52 CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to  
5-53 an improvement project undertaken by or through a local government  
5-54 corporation exempt from competitive bidding requirements or  
5-55 restrictions under Section 431.110, Transportation Code.

5-56 Sec. 2267.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES.  
5-57 This chapter does not apply to a regional mobility authority under  
5-58 Chapter 370, Transportation Code.

5-59 Sec. 2267.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This  
5-60 chapter does not apply to a project of a county under Chapter 284,  
5-61 Transportation Code, unless the county adopts an order electing to  
5-62 be governed by this chapter for a project to be developed by the  
5-63 county under Chapter 284.

5-64 Sec. 2267.010. EXEMPTION: COORDINATED COUNTY  
5-65 TRANSPORTATION AUTHORITY. This chapter does not apply to a  
5-66 coordinated county transportation authority under Chapter 460,  
5-67 Transportation Code.

5-68 [Sections 2267.011-2267.050 reserved for expansion]

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## SUBCHAPTER B. GENERAL POWERS AND DUTIES

6-1           Sec. 2267.051. RULES. A governmental entity may adopt  
 6-2 rules as necessary to implement this chapter.

6-3           Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental  
 6-4 entity shall advertise or publish notice of requests for bids,  
 6-5 proposals, or qualifications in a manner prescribed by law.

6-6           (b) For a contract entered into by a governmental entity  
 6-7 under a method provided by this chapter, the governmental entity  
 6-8 shall publish notice of the time and place the bid or proposal or  
 6-9 request for qualifications will be received and opened in a manner  
 6-10 prescribed by law.

6-11           (c) For a contract entered into by a municipality, river  
 6-12 authority, conservation and reclamation district created pursuant  
 6-13 to Section 59, Article XVI, Texas Constitution, and located in a  
 6-14 county with a population of more than 250,000, or defense base  
 6-15 development authority under any of the methods provided by this  
 6-16 chapter, the municipality, river authority, conservation and  
 6-17 reclamation district created pursuant to Section 59, Article XVI,  
 6-18 Texas Constitution, and located in a county with a population of  
 6-19 more than 250,000, or defense base development authority shall  
 6-20 publish notice of the time and place the bids or proposals, or the  
 6-21 responses to a request for qualifications, will be received and  
 6-22 opened. The notice must be published in a newspaper of general  
 6-23 circulation in the county in which the defense base development  
 6-24 authority's or municipality's central administrative office is  
 6-25 located or the county in which the greatest amount of the river  
 6-26 authority's or such conservation and reclamation district's  
 6-27 territory is located once each week for at least two weeks before  
 6-28 the deadline for receiving bids, proposals, or responses. If there  
 6-29 is not a newspaper of general circulation in that county, the notice  
 6-30 shall be published in a newspaper of general circulation in the  
 6-31 county nearest the county seat of the county in which the defense  
 6-32 base development authority's or municipality's central  
 6-33 administrative office is located or the county in which the  
 6-34 greatest amount of the river authority's or such conservation and  
 6-35 reclamation district's territory is located. In a two-step  
 6-36 procurement process, the time and place the second step bids,  
 6-37 proposals, or responses will be received are not required to be  
 6-38 published separately.

6-39           (d) For a contract entered into by a county under any of the  
 6-40 methods provided by this chapter, the county shall publish notice  
 6-41 of the time and place the bids or proposals, or the responses to a  
 6-42 request for qualifications, will be received and opened. The  
 6-43 notice must be published in a newspaper of general circulation in  
 6-44 the county once each week for at least two weeks before the deadline  
 6-45 for receiving bids, proposals, or responses. If there is not a  
 6-46 newspaper of general circulation in the county, the notice shall  
 6-47 be:

6-48           (1) posted at the courthouse door of the county; and  
 6-49           (2) published in a newspaper of general circulation in  
 6-50 the nearest county.

6-51           Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing  
 6-52 body of a governmental entity may delegate its authority under this  
 6-53 chapter regarding an action authorized or required by this chapter  
 6-54 to a designated representative, committee, or other person.

6-55           (b) The governmental entity shall provide notice of the  
 6-56 delegation, the limits of the delegation, and the name or title of  
 6-57 each person designated under Subsection (a) by rule or in the  
 6-58 request for bids, proposals, or qualifications or in an addendum to  
 6-59 the request.

6-60           Sec. 2267.054. RIGHT TO WORK. (a) This section applies to  
 6-61 a governmental entity when the governmental entity is engaged in:

6-62           (1) procuring goods or services under this chapter;  
 6-63           (2) awarding a contract under this chapter; or  
 6-64           (3) overseeing procurement or construction for a  
 6-65 public work or public improvement under this chapter.

6-66           (b) In engaging in an activity to which this section  
 6-67 applies, a governmental entity:

6-68           (1) may not consider whether a person is a member of or  
 6-69

7-1 has another relationship with any organization; and  
 7-2 (2) shall ensure that its bid specifications and any  
 7-3 subsequent contract or other agreement do not deny or diminish the  
 7-4 right of a person to work because of the person's membership or  
 7-5 other relationship status with respect to an organization.

7-6 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining  
 7-7 the award of a contract under this chapter, the governmental entity  
 7-8 may consider:

7-9 (1) the price;

7-10 (2) the offeror's experience and reputation;

7-11 (3) the quality of the offeror's goods or services;

7-12 (4) the impact on the ability of the governmental  
 7-13 entity to comply with rules relating to historically underutilized  
 7-14 businesses;

7-15 (5) the offeror's safety record;

7-16 (6) the offeror's proposed personnel;

7-17 (7) whether the offeror's financial capability is  
 7-18 appropriate to the size and scope of the project; and

7-19 (8) any other relevant factor specifically listed in  
 7-20 the request for bids, proposals, or qualifications.

7-21 (b) In determining the award of a contract under this  
 7-22 chapter, the governmental entity shall:

7-23 (1) consider and apply any existing laws, including  
 7-24 any criteria, related to historically underutilized businesses;  
 7-25 and

7-26 (2) consider and apply any existing laws, rules, or  
 7-27 applicable municipal charters, including laws applicable to local  
 7-28 governments, related to the use of women, minority, small, or  
 7-29 disadvantaged businesses.

7-30 Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING  
 7-31 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

7-32 (a) The governing body of a governmental entity that considers a  
 7-33 construction contract using a method authorized by this chapter  
 7-34 other than competitive bidding must, before advertising, determine  
 7-35 which method provides the best value for the governmental entity.

7-36 (b) The governmental entity shall base its selection among  
 7-37 offerors on applicable criteria listed for the particular method  
 7-38 used. The governmental entity shall publish in the request for  
 7-39 proposals or qualifications the criteria that will be used to  
 7-40 evaluate the offerors, and the applicable weighted value for each  
 7-41 criterion.

7-42 (c) The governmental entity shall document the basis of its  
 7-43 selection and shall make the evaluations public not later than the  
 7-44 seventh day after the date the contract is awarded.

7-45 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An  
 7-46 architect or engineer required to be selected or designated under  
 7-47 this chapter has full responsibility for complying with Chapter  
 7-48 1051 or 1001, Occupations Code, as applicable.

7-49 (b) If the selected or designated architect or engineer is  
 7-50 not a full-time employee of the governmental entity, the  
 7-51 governmental entity shall select the architect or engineer on the  
 7-52 basis of demonstrated competence and qualifications as provided by  
 7-53 Section 2254.004.

7-54 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.

7-55 (a) Independently of the contractor, construction  
 7-56 manager-at-risk, or design-build firm, the governmental entity  
 7-57 shall provide or contract for the construction materials  
 7-58 engineering, testing, and inspection services and the verification  
 7-59 testing services necessary for acceptance of the facility by the  
 7-60 governmental entity.

7-61 (b) The governmental entity shall select the services for  
 7-62 which it contracts under this section in accordance with Section  
 7-63 2254.004.

7-64 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS  
 7-65 REQUIRED. A person who submits a bid, proposal, or qualification to  
 7-66 a governmental entity shall seal it before delivery.

7-67 [Sections 2267.060-2267.100 reserved for expansion]

7-68 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

7-69 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE

8-1 BIDDING. (a) In this chapter, "competitive bidding" is a  
 8-2 procurement method by which a governmental entity contracts with a  
 8-3 contractor for the construction, alteration, rehabilitation, or  
 8-4 repair of a facility by awarding the contract to the lowest  
 8-5 responsible bidder.

8-6 (b) Except as otherwise provided by this chapter or other  
 8-7 law, a governmental entity may contract for the construction,  
 8-8 alteration, rehabilitation, or repair of a facility only after the  
 8-9 entity advertises for bids for the contract in a manner prescribed  
 8-10 by law, receives competitive bids, and awards the contract to the  
 8-11 lowest responsible bidder.

8-12 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The  
 8-13 governmental entity shall select or designate an architect or  
 8-14 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
 8-15 as applicable, to prepare the construction documents required for a  
 8-16 project to be awarded by competitive bidding.

8-17 Sec. 2267.103. PREPARATION OF REQUEST. The governmental  
 8-18 entity shall prepare a request for competitive bids that includes  
 8-19 construction documents, estimated budget, project scope, estimated  
 8-20 project completion date, and other information that a contractor  
 8-21 may require to submit a bid.

8-22 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental  
 8-23 entity shall receive, publicly open, and read aloud the names of the  
 8-24 offerors and their bids.

8-25 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the  
 8-26 10th business day after the date the contract is awarded, the  
 8-27 governmental entity shall document the basis of its selection and  
 8-28 shall make the evaluations public.

8-29 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING  
 8-30 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise  
 8-31 specifically provided by this section, Subchapter B, Chapter 271,  
 8-32 Local Government Code, does not apply to a competitive bidding  
 8-33 process conducted under this chapter. Sections 271.026,  
 8-34 271.027(a), and 271.0275, Local Government Code, apply to a  
 8-35 competitive bidding process conducted under this chapter by a  
 8-36 governmental entity as defined by Section 271.021, Local Government  
 8-37 Code.

8-38 [Sections 2267.107-2267.150 reserved for expansion]

8-39 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

8-40 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE  
 8-41 SEALED PROPOSALS. (a) In this chapter, "competitive sealed  
 8-42 proposals" is a procurement method by which a governmental entity  
 8-43 requests proposals, ranks the offerors, negotiates as prescribed,  
 8-44 and then contracts with a general contractor for the construction,  
 8-45 rehabilitation, alteration, or repair of a facility.

8-46 (b) In selecting a contractor through competitive sealed  
 8-47 proposals, a governmental entity shall follow the procedures  
 8-48 provided by this subchapter.

8-49 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The  
 8-50 governmental entity shall select or designate an architect or  
 8-51 engineer to prepare construction documents for the project.

8-52 Sec. 2267.153. PREPARATION OF REQUEST. The governmental  
 8-53 entity shall prepare a request for competitive sealed proposals  
 8-54 that includes construction documents, selection criteria and the  
 8-55 weighted value for each criterion, estimated budget, project scope,  
 8-56 estimated project completion date, and other information that a  
 8-57 contractor may require to respond to the request.

8-58 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The  
 8-59 governmental entity shall receive, publicly open, and read aloud  
 8-60 the names of the offerors and any monetary proposals made by the  
 8-61 offerors.

8-62 (b) Not later than the 45th day after the date on which the  
 8-63 proposals are opened, the governmental entity shall evaluate and  
 8-64 rank each proposal submitted in relation to the published selection  
 8-65 criteria.

8-66 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental  
 8-67 entity shall select the offeror that submits the proposal that  
 8-68 offers the best value for the governmental entity based on:

8-69 (1) the selection criteria in the request for proposal

9-1 and the weighted value for those criteria in the request for  
 9-2 proposal; and

9-3 (2) its ranking evaluation.

9-4 (b) The governmental entity shall first attempt to  
 9-5 negotiate a contract with the selected offeror. The governmental  
 9-6 entity and its architect or engineer may discuss with the selected  
 9-7 offeror options for a scope or time modification and any price  
 9-8 change associated with the modification.

9-9 (c) If the governmental entity is unable to negotiate a  
 9-10 satisfactory contract with the selected offeror, the governmental  
 9-11 entity shall, formally and in writing, end negotiations with that  
 9-12 offeror and proceed to the next offeror in the order of the  
 9-13 selection ranking until a contract is reached or all proposals are  
 9-14 rejected.

9-15 [Sections 2267.156-2267.200 reserved for expansion]

9-16 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

9-17 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 9-18 MANAGER-AGENT. (a) In this chapter, the "construction  
 9-19 manager-agent method" is a delivery method by which a governmental  
 9-20 entity contracts with a construction manager-agent to provide  
 9-21 consultation or administrative services during the design and  
 9-22 construction phase and to manage multiple contracts with various  
 9-23 construction prime contractors.

9-24 (b) A construction manager-agent is a sole proprietorship,  
 9-25 partnership, corporation, or other legal entity that serves as the  
 9-26 agent for the governmental entity by providing construction  
 9-27 administration and management services described by Subsection (a)  
 9-28 for the construction, rehabilitation, alteration, or repair of a  
 9-29 facility.

9-30 (c) A governmental entity may retain a construction  
 9-31 manager-agent for assistance in the construction, rehabilitation,  
 9-32 alteration, or repair of a facility only as provided by this  
 9-33 subchapter.

9-34 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION  
 9-35 MANAGER-AGENT. The contract between the governmental entity and  
 9-36 the construction manager-agent may require the construction  
 9-37 manager-agent to provide:

9-38 (1) administrative personnel;

9-39 (2) equipment necessary to perform duties under this  
 9-40 subchapter;

9-41 (3) on-site management; and

9-42 (4) other services specified in the contract.

9-43 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A  
 9-44 construction manager-agent may not:

9-45 (1) self-perform any aspect of the construction,  
 9-46 rehabilitation, alteration, or repair of the facility;

9-47 (2) be a party to a construction subcontract for the  
 9-48 construction, rehabilitation, alteration, or repair of the  
 9-49 facility; or

9-50 (3) provide or be required to provide performance and  
 9-51 payment bonds for the construction, rehabilitation, alteration, or  
 9-52 repair of the facility.

9-53 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION  
 9-54 MANAGER-AGENT. A construction manager-agent represents the  
 9-55 governmental entity in a fiduciary capacity.

9-56 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or  
 9-57 before the selection of a construction manager-agent, the  
 9-58 governmental entity shall select or designate an architect or  
 9-59 engineer in accordance with Chapter 1051 or 1001, Occupations Code,  
 9-60 as applicable, to prepare the construction documents for the  
 9-61 project.

9-62 (b) The governmental entity's architect or engineer may not  
 9-63 serve, alone or in combination with another person, as the  
 9-64 construction manager-agent unless the architect or engineer is  
 9-65 hired to serve as the construction manager-agent under a separate  
 9-66 or concurrent selection process conducted in accordance with this  
 9-67 subchapter. This subsection does not prohibit the governmental  
 9-68 entity's architect or engineer from providing customary  
 9-69 construction phase services under the architect's or engineer's

10-1 original professional service agreement in accordance with  
 10-2 applicable licensing laws.

10-3 (c) To the extent that the construction manager-agent's  
 10-4 services are defined as part of the practice of architecture or  
 10-5 engineering under Chapter 1051 or 1001, Occupations Code, those  
 10-6 services must be conducted by a person licensed under the  
 10-7 applicable chapter.

10-8 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental  
 10-9 entity using the construction manager-agent method shall procure,  
 10-10 in accordance with applicable law and in any manner authorized by  
 10-11 this chapter, a general contractor or trade contractors who will  
 10-12 serve as the prime contractor for their specific portion of the work  
 10-13 and provide performance and payment bonds to the governmental  
 10-14 entity in accordance with applicable laws.

10-15 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A  
 10-16 governmental entity shall select a construction manager-agent on  
 10-17 the basis of demonstrated competence and qualifications in the same  
 10-18 manner that an architect or engineer is selected under Section  
 10-19 2254.004.

10-20 Sec. 2267.208. INSURANCE. A construction manager-agent  
 10-21 selected under this subchapter shall maintain professional  
 10-22 liability or errors and omissions insurance in the amount of at  
 10-23 least \$1 million for each occurrence.

10-24 [Sections 2267.209-2267.250 reserved for expansion]

10-25 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

10-26 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION  
 10-27 MANAGER-AT-RISK. (a) In this chapter, the "construction  
 10-28 manager-at-risk method" is a delivery method by which a  
 10-29 governmental entity contracts with an architect or engineer for  
 10-30 design and construction phase services and contracts separately  
 10-31 with a construction manager-at-risk to serve as the general  
 10-32 contractor and to provide consultation during the design and  
 10-33 construction, rehabilitation, alteration, or repair of a facility.

10-34 (b) A construction manager-at-risk is a sole  
 10-35 proprietorship, partnership, corporation, or other legal entity  
 10-36 that assumes the risk for construction, rehabilitation,  
 10-37 alteration, or repair of a facility at the contracted price as a  
 10-38 general contractor and provides consultation to the governmental  
 10-39 entity regarding construction during and after the design of the  
 10-40 facility. The contracted price may be a guaranteed maximum price.

10-41 (c) A governmental entity may use the construction  
 10-42 manager-at-risk method in selecting a general contractor for the  
 10-43 construction, rehabilitation, alteration, or repair of a facility  
 10-44 only as provided by this subchapter.

10-45 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or  
 10-46 before the selection of a construction manager-at-risk, the  
 10-47 governmental entity shall select or designate an architect or  
 10-48 engineer to prepare the construction documents for the project.

10-49 (b) The governmental entity's architect or engineer for a  
 10-50 project may not serve, alone or in combination with another person,  
 10-51 as the construction manager-at-risk unless the architect or  
 10-52 engineer is hired to serve as the construction manager-at-risk  
 10-53 under a separate or concurrent selection process conducted in  
 10-54 accordance with this subchapter. This subsection does not prohibit  
 10-55 the governmental entity's architect or engineer from providing  
 10-56 customary construction phase services under the architect's or  
 10-57 engineer's original professional service agreement in accordance  
 10-58 with applicable licensing laws.

10-59 Sec. 2267.253. SELECTION PROCESS. (a) The governmental  
 10-60 entity shall select the construction manager-at-risk in a one-step  
 10-61 or two-step process.

10-62 (b) The governmental entity shall prepare a single request  
 10-63 for proposals, in the case of a one-step process, and an initial  
 10-64 request for qualifications, in the case of a two-step process, that  
 10-65 includes:

10-66 (1) a statement as to whether the selection process is  
 10-67 a one-step or two-step process;

10-68 (2) general information on the project site, project  
 10-69 scope, schedule, selection criteria and the weighted value for each

11-1 criterion, and estimated budget and the time and place for receipt  
 11-2 of the proposals or qualifications; and

11-3 (3) other information that may assist the governmental  
 11-4 entity in its selection of a construction manager-at-risk.

11-5 (c) The governmental entity shall state the selection  
 11-6 criteria in the request for proposals or qualifications.

11-7 (d) If a one-step process is used, the governmental entity  
 11-8 may request, as part of the offeror's proposal, proposed fees and  
 11-9 prices for fulfilling the general conditions.

11-10 (e) If a two-step process is used, the governmental entity  
 11-11 may not request fees or prices in step one. In step two, the  
 11-12 governmental entity may request that five or fewer offerors,  
 11-13 selected solely on the basis of qualifications, provide additional  
 11-14 information, including the construction manager-at-risk's proposed  
 11-15 fee and prices for fulfilling the general conditions.

11-16 (f) At each step, the governmental entity shall receive,  
 11-17 publicly open, and read aloud the names of the offerors. At the  
 11-18 appropriate step, the governmental entity shall also read aloud the  
 11-19 fees and prices, if any, stated in each proposal as the proposal is  
 11-20 opened.

11-21 (g) Not later than the 45th day after the date on which the  
 11-22 final proposals are opened, the governmental entity shall evaluate  
 11-23 and rank each proposal submitted in relation to the criteria set  
 11-24 forth in the request for proposals.

11-25 Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental  
 11-26 entity shall select the offeror that submits the proposal that  
 11-27 offers the best value for the governmental entity based on the  
 11-28 published selection criteria and on its ranking evaluation.

11-29 (b) The governmental entity shall first attempt to  
 11-30 negotiate a contract with the selected offeror.

11-31 (c) If the governmental entity is unable to negotiate a  
 11-32 satisfactory contract with the selected offeror, the governmental  
 11-33 entity shall, formally and in writing, end negotiations with that  
 11-34 offeror and proceed to negotiate with the next offeror in the order  
 11-35 of the selection ranking until a contract is reached or  
 11-36 negotiations with all ranked offerors end.

11-37 (d) Not later than the seventh day after the date the  
 11-38 contract is awarded, the governmental entity shall make the  
 11-39 rankings determined under Section 2267.253(g) public.

11-40 Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction  
 11-41 manager-at-risk shall publicly advertise for bids or proposals and  
 11-42 receive bids or proposals from trade contractors or subcontractors  
 11-43 for the performance of all major elements of the work other than the  
 11-44 minor work that may be included in the general conditions.

11-45 (b) A construction manager-at-risk may seek to perform  
 11-46 portions of the work itself if:

11-47 (1) the construction manager-at-risk submits its bid  
 11-48 or proposal for those portions of the work in the same manner as all  
 11-49 other trade contractors or subcontractors; and

11-50 (2) the governmental entity determines that the  
 11-51 construction manager-at-risk's bid or proposal provides the best  
 11-52 value for the governmental entity.

11-53 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The  
 11-54 construction manager-at-risk shall review all trade contractor or  
 11-55 subcontractor bids or proposals in a manner that does not disclose  
 11-56 the contents of the bid or proposal during the selection process to  
 11-57 a person not employed by the construction manager-at-risk,  
 11-58 architect, engineer, or governmental entity. All bids or proposals  
 11-59 shall be made available to the governmental entity on request and to  
 11-60 the public after the later of the award of the contract or the  
 11-61 seventh day after the date of final selection of bids or proposals.

11-62 (b) If the construction manager-at-risk reviews, evaluates,  
 11-63 and recommends to the governmental entity a bid or proposal from a  
 11-64 trade contractor or subcontractor but the governmental entity  
 11-65 requires another bid or proposal to be accepted, the governmental  
 11-66 entity shall compensate the construction manager-at-risk by a  
 11-67 change in price, time, or guaranteed maximum cost for any  
 11-68 additional cost and risk that the construction manager-at-risk  
 11-69 incurs because of the governmental entity's requirement that

12-1 another bid or proposal be accepted.

12-2 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected  
 12-3 trade contractor or subcontractor defaults in the performance of  
 12-4 its work or fails to execute a subcontract after being selected in  
 12-5 accordance with this subchapter, the construction manager-at-risk  
 12-6 may itself fulfill, without advertising, the contract requirements  
 12-7 or select a replacement trade contractor or subcontractor to  
 12-8 fulfill the contract requirements.

12-9 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a  
 12-10 fixed contract amount or guaranteed maximum price has not been  
 12-11 determined at the time the contract is awarded, the penal sums of  
 12-12 the performance and payment bonds delivered to the governmental  
 12-13 entity must each be in an amount equal to the construction budget,  
 12-14 as specified in the request for proposals or qualifications.

12-15 (b) The construction manager-at-risk shall deliver the  
 12-16 bonds not later than the 10th day after the date the construction  
 12-17 manager-at-risk executes the contract unless the construction  
 12-18 manager-at-risk furnishes a bid bond or other financial security  
 12-19 acceptable to the governmental entity to ensure that the  
 12-20 construction manager will furnish the required performance and  
 12-21 payment bonds when a guaranteed maximum price is established.

12-22 [Sections 2267.259-2267.300 reserved for expansion]

12-23 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

12-24 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In  
 12-25 this chapter, "design-build" is a project delivery method by which  
 12-26 a governmental entity contracts with a single entity to provide  
 12-27 both design and construction services for the construction,  
 12-28 rehabilitation, alteration, or repair of a facility.

12-29 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
 12-30 EXCEPTIONS. This subchapter applies only to a facility that is a  
 12-31 building or an associated structure, including an electric utility  
 12-32 structure. This subchapter does not apply to:

12-33 (1) a highway, road, street, bridge, underground  
 12-34 utility, water supply project, water plant, wastewater plant, water  
 12-35 and wastewater distribution or conveyance facility, wharf, dock,  
 12-36 airport runway or taxiway, drainage project, or related type of  
 12-37 project associated with civil engineering construction; or

12-38 (2) a building or structure that is incidental to a  
 12-39 project that is primarily a civil engineering construction project.

12-40 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A  
 12-41 governmental entity may use the design-build method for the  
 12-42 construction, rehabilitation, alteration, or repair of a building  
 12-43 or associated structure only as provided by this subchapter. In  
 12-44 using that method, the governmental entity shall enter into a  
 12-45 single contract with a design-build firm for the design and  
 12-46 construction of the building or associated structure.

12-47 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm  
 12-48 under this subchapter must be a sole proprietorship, partnership,  
 12-49 corporation, or other legal entity or team that includes an  
 12-50 architect or engineer and a construction contractor.

12-51 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT  
 12-52 REPRESENTATIVE. The governmental entity shall select or designate  
 12-53 an architect or engineer independent of the design-build firm to  
 12-54 act as the governmental entity's representative for the duration of  
 12-55 the project.

12-56 Sec. 2267.306. PREPARATION OF REQUEST. (a) The  
 12-57 governmental entity shall prepare a request for qualifications that  
 12-58 includes general information on the project site, project scope,  
 12-59 budget, special systems, selection criteria and the weighted value  
 12-60 for each criterion, and other information that may assist potential  
 12-61 design-build firms in submitting proposals for the project.

12-62 (b) The governmental entity shall also prepare the design  
 12-63 criteria package that includes more detailed information on the  
 12-64 project. If the preparation of the design criteria package  
 12-65 requires architectural or engineering services that constitute the  
 12-66 practice of architecture within the meaning of Chapter 1051,  
 12-67 Occupations Code, or the practice of engineering within the meaning  
 12-68 of Chapter 1001, Occupations Code, those services shall be provided  
 12-69 in accordance with the applicable law.

13-1           (c) The design criteria package must include a set of  
13-2 documents that provides sufficient information, including criteria  
13-3 for selection, to permit a design-build firm to prepare a response  
13-4 to the governmental entity's request for qualifications and to  
13-5 provide any additional information requested. The design criteria  
13-6 package must specify criteria the governmental entity considers  
13-7 necessary to describe the project and may include, as appropriate,  
13-8 the legal description of the site, survey information concerning  
13-9 the site, interior space requirements, special material  
13-10 requirements, material quality standards, conceptual criteria for  
13-11 the project, special equipment requirements, cost or budget  
13-12 estimates, time schedules, quality assurance and quality control  
13-13 requirements, site development requirements, applicable codes and  
13-14 ordinances, provisions for utilities, parking requirements, and  
13-15 any other requirement.

13-16           (d) The governmental entity may not require offerors to  
13-17 submit architectural or engineering designs as part of a proposal  
13-18 or a response to a request for qualifications.

13-19           Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For  
13-20 each design-build firm that responded to the request for  
13-21 qualifications, the governmental entity shall evaluate the firm's  
13-22 experience, technical competence, and capability to perform, the  
13-23 past performance of the firm and members of the firm, and other  
13-24 appropriate factors submitted by the firm in response to the  
13-25 request for qualifications, except that cost-related or  
13-26 price-related evaluation factors are not permitted.

13-27           (b) Each firm must certify to the governmental entity that  
13-28 each architect or engineer that is a member of the firm was selected  
13-29 based on demonstrated competence and qualifications, in the manner  
13-30 provided by Section 2254.004.

13-31           (c) The governmental entity shall qualify a maximum of five  
13-32 responders to submit proposals that contain additional information  
13-33 and, if the governmental entity chooses, to interview for final  
13-34 selection.

13-35           (d) The governmental entity shall evaluate the additional  
13-36 information submitted by the offerors on the basis of the selection  
13-37 criteria stated in the request for qualifications and the results  
13-38 of any interview.

13-39           (e) The governmental entity may request additional  
13-40 information regarding demonstrated competence and qualifications,  
13-41 considerations of the safety and long-term durability of the  
13-42 project, the feasibility of implementing the project as proposed,  
13-43 the ability of the offeror to meet schedules, or costing  
13-44 methodology. As used in this subsection, "costing methodology"  
13-45 means an offeror's policies on subcontractor markup, definition of  
13-46 general conditions, range of cost for general conditions, policies  
13-47 on retainage, policies on contingencies, discount for prompt  
13-48 payment, and expected staffing for administrative duties. The term  
13-49 does not include a guaranteed maximum price or bid for overall  
13-50 design or construction.

13-51           (f) The governmental entity shall rank each proposal  
13-52 submitted on the basis of the criteria set forth in the request for  
13-53 qualifications.

13-54           Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The  
13-55 governmental entity shall select the design-build firm that submits  
13-56 the proposal offering the best value for the governmental entity on  
13-57 the basis of the published selection criteria and on its ranking  
13-58 evaluations.

13-59           (b) The governmental entity shall first attempt to  
13-60 negotiate a contract with the selected firm.

13-61           (c) If the governmental entity is unable to negotiate a  
13-62 satisfactory contract with the selected firm, the governmental  
13-63 entity shall, formally and in writing, end all negotiations with  
13-64 that firm and proceed to negotiate with the next firm in the order  
13-65 of the selection ranking until a contract is reached or  
13-66 negotiations with all ranked firms end.

13-67           (d) Not later than the seventh day after the date the  
13-68 contract is awarded, the governmental entity shall make the  
13-69 rankings determined under Section 2267.307(f) public.

14-1 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After  
 14-2 selection of the design-build firm, that firm's architects or  
 14-3 engineers shall submit all design elements for review and  
 14-4 determination of scope compliance to the governmental entity or the  
 14-5 governmental entity's architect or engineer before or concurrently  
 14-6 with construction.

14-7 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The  
 14-8 design-build firm shall supply a set of construction documents for  
 14-9 the completed project to the governmental entity at the conclusion  
 14-10 of construction. The documents must note any changes made during  
 14-11 construction.

14-12 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment  
 14-13 or performance bond is not required and may not provide coverage for  
 14-14 the design portion of the design-build contract with the  
 14-15 design-build firm under this subchapter.

14-16 (b) If a fixed contract amount or guaranteed maximum price  
 14-17 has not been determined at the time the design-build contract is  
 14-18 awarded, the penal sums of the performance and payment bonds  
 14-19 delivered to the governmental entity must each be in an amount equal  
 14-20 to the construction budget, as specified in the design criteria  
 14-21 package.

14-22 (c) The design-build firm shall deliver the bonds not later  
 14-23 than the 10th day after the date the design-build firm executes the  
 14-24 contract unless the design-build firm furnishes a bid bond or other  
 14-25 financial security acceptable to the governmental entity to ensure  
 14-26 that the design-build firm will furnish the required performance  
 14-27 and payment bonds before construction begins.

14-28 [Sections 2267.312-2267.350 reserved for expansion]

14-29 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS  
 14-30 PROJECTS

14-31 Sec. 2267.351. DEFINITIONS. In this subchapter:

14-32 (1) "Civil works project" means:

14-33 (A) roads, streets, bridges, utilities, water  
 14-34 supply projects, water plants, wastewater plants, water  
 14-35 distribution and wastewater conveyance facilities, desalination  
 14-36 projects, wharves, docks, airport runways and taxiways, storm  
 14-37 drainage and flood control projects, or transit projects;

14-38 (B) types of projects or facilities related to  
 14-39 those described by Paragraph (A) and associated with civil  
 14-40 engineering construction; and

14-41 (C) buildings or structures that are incidental  
 14-42 to projects or facilities that are described by Paragraphs (A) and  
 14-43 (B) and that are primarily civil engineering construction projects.

14-44 (2) "Design-build firm" means a partnership,  
 14-45 corporation, or other legal entity or team that includes an  
 14-46 engineer and a construction contractor qualified to engage in civil  
 14-47 works construction in Texas.

14-48 (3) "Design criteria package" means a set of documents  
 14-49 that:

14-50 (A) provides sufficient information to convey  
 14-51 the intent, goals, criteria, and objectives of the civil works  
 14-52 project; and

14-53 (B) permits a design-build firm to:  
 14-54 (i) assess the scope of work and the risk  
 14-55 involved; and

14-56 (ii) submit a proposal on the project.

14-57 Sec. 2267.352. APPLICABILITY. This subchapter applies to a  
 14-58 governmental entity that:

14-59 (1) has a population of more than 100,000 within the  
 14-60 entity's geographic boundary or service area; or

14-61 (2) is a board of trustees governed by Chapter 54,  
 14-62 Transportation Code.

14-63 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:  
 14-64 DESIGN-BUILD. (a) A governmental entity may use the design-build  
 14-65 method for the construction, rehabilitation, alteration, or repair  
 14-66 of a civil works project. In using this method and in entering into  
 14-67 a contract for the services of a design-build firm, the contracting  
 14-68 governmental entity and the design-build firm shall follow the  
 14-69 procedures provided by this subchapter.

15-1 (b) A contract for a project under this subchapter may cover  
 15-2 only a single integrated project. A governmental entity may not  
 15-3 enter into a contract for aggregated projects at multiple  
 15-4 locations. For purposes of this subsection:

15-5 (1) if a metropolitan transit authority created under  
 15-6 Chapter 451, Transportation Code, enters into a contract for a  
 15-7 project involving a bus rapid transit system created under Chapter  
 15-8 451, Transportation Code, the bus rapid transit system is a single  
 15-9 integrated project; and

15-10 (2) a water treatment plant, including a desalination  
 15-11 plant, that includes treatment facilities, well fields, and  
 15-12 pipelines is a single integrated project.

15-13 (c) A governmental entity shall use the following criteria  
 15-14 as a minimum basis for determining the circumstances under which  
 15-15 the design-build method is appropriate for a project:

15-16 (1) the extent to which the entity can adequately  
 15-17 define the project requirements;

15-18 (2) the time constraints for the delivery of the  
 15-19 project;

15-20 (3) the ability to ensure that a competitive  
 15-21 procurement can be held; and

15-22 (4) the capability of the entity to manage and oversee  
 15-23 the project, including the availability of experienced personnel or  
 15-24 outside consultants who are familiar with the design-build method  
 15-25 of project delivery.

15-26 (d) A governmental entity shall make a formal finding on the  
 15-27 criteria described by Subsection (c) before preparing a request for  
 15-28 qualifications under Section 2267.357.

15-29 Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a)  
 15-30 Before September 1, 2013:

15-31 (1) a governmental entity with a population of 500,000  
 15-32 or more within the entity's geographic boundary or service area  
 15-33 may, under this subchapter, enter into contracts for not more than  
 15-34 three projects in any fiscal year; and

15-35 (2) a municipally owned water utility with a separate  
 15-36 governing board appointed by the governing body of a municipality  
 15-37 with a population of 500,000 or more may:

15-38 (A) independently enter into a contract for not  
 15-39 more than one civil works project in any fiscal year; and

15-40 (B) enter into contracts for additional civil  
 15-41 works projects in any fiscal year, but not more than the number of  
 15-42 civil works projects prescribed by the limit in Subdivision (1) for  
 15-43 the municipality, provided that:

15-44 (i) the additional contracts for the civil  
 15-45 works projects entered into by the utility under this paragraph are  
 15-46 allocated to the number of contracts the municipality that appoints  
 15-47 the utility's governing board may enter under Subdivision (1); and

15-48 (ii) the governing body of the municipality  
 15-49 must approve the contracts.

15-50 (b) Before September 1, 2015, a governmental entity that has  
 15-51 a population of 100,000 or more but less than 500,000 or is a board  
 15-52 of trustees governed by Chapter 54, Transportation Code, may enter  
 15-53 into contracts under this subchapter for not more than two projects  
 15-54 in any fiscal year.

15-55 (c) After the period described by Subsection (a) or (b):

15-56 (1) a governmental entity with a population of 500,000  
 15-57 or more within the entity's geographic boundary or service area  
 15-58 may, under this subchapter, enter into contracts for not more than  
 15-59 six projects in any fiscal year;

15-60 (2) a municipally owned water utility with a separate  
 15-61 governing board appointed by the governing body of a municipality  
 15-62 with a population of 500,000 or more may:

15-63 (A) independently enter into contracts for not  
 15-64 more than two civil works projects in any fiscal year; and

15-65 (B) enter into contracts for additional civil  
 15-66 works projects in any fiscal year, but not more than the number of  
 15-67 civil works projects prescribed by the limit in Subdivision (1) for  
 15-68 the municipality, provided that:

15-69 (i) the additional contracts for the civil

16-1 works projects entered into by the utility under this paragraph are  
16-2 allocated to the number of contracts the municipality that appoints  
16-3 the utility's governing board may enter under Subdivision (1); and

16-4 (ii) the governing body of the municipality  
16-5 must approve the contracts; and

16-6 (3) a governmental entity that has a population of  
16-7 100,000 or more but less than 500,000 or is a board of trustees  
16-8 governed by Chapter 54, Transportation Code, may enter into  
16-9 contracts under this subchapter for not more than four projects in  
16-10 any fiscal year.

16-11 (d) For purposes of determining the number of eligible  
16-12 projects under this section, a municipally owned water utility with  
16-13 a separate governing board appointed by the governing body of the  
16-14 municipality is considered part of the municipality.

16-15 Sec. 2267.355. USE OF ENGINEER. (a) The governmental  
16-16 entity shall select or designate an engineer who is independent of  
16-17 the design-build firm to act as its representative for the  
16-18 procurement process and for the duration of the work on the civil  
16-19 works project. The selected or designated engineer has full  
16-20 responsibility for complying with Chapter 1001, Occupations Code.

16-21 (b) If the engineer is not a full-time employee of the  
16-22 governmental entity, the governmental entity shall select the  
16-23 engineer on the basis of demonstrated competence and qualifications  
16-24 as provided by Section 2254.004.

16-25 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

16-26 (a) The governmental entity shall provide or contract for,  
16-27 independently of the design-build firm, the following services as  
16-28 necessary for the acceptance of the civil works project by the  
16-29 entity:

- 16-30 (1) inspection services;
- 16-31 (2) construction materials engineering and testing;

16-32 and

- 16-33 (3) verification testing services.

16-34 (b) The governmental entity shall select the services for  
16-35 which it contracts under this section in accordance with Section  
16-36 2254.004.

16-37 Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The  
16-38 governmental entity shall prepare a request for qualifications that  
16-39 includes:

- 16-40 (1) information on the civil works project site;
- 16-41 (2) project scope;
- 16-42 (3) project budget;
- 16-43 (4) project schedule;
- 16-44 (5) criteria for selection under Section 2267.359 and

16-45 the weighting of the criteria; and

- 16-46 (6) other information that may assist potential
- 16-47 design-build firms in submitting proposals for the project.

16-48 (b) The governmental entity shall also prepare a design  
16-49 criteria package as described by Section 2267.358.

16-50 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A  
16-51 design criteria package may include, as appropriate:

- 16-52 (1) budget or cost estimates;
- 16-53 (2) information on the site;
- 16-54 (3) performance criteria;
- 16-55 (4) special material requirements;
- 16-56 (5) initial design calculations;
- 16-57 (6) known utilities;
- 16-58 (7) capacity requirements;
- 16-59 (8) quality assurance and quality control

16-60 requirements;

- 16-61 (9) the type, size, and location of structures; and

16-62 (10) notice of any ordinances, rules, or goals adopted  
16-63 by the governmental entity relating to awarding contracts to  
16-64 historically underutilized businesses.

16-65 Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The  
16-66 governmental entity shall receive proposals and shall evaluate each  
16-67 offeror's experience, technical competence, and capability to  
16-68 perform, the past performance of the offeror's team and members of  
16-69 the team, and other appropriate factors submitted by the team or

17-1 firm in response to the request for qualifications, except that  
 17-2 cost-related or price-related evaluation factors are not permitted  
 17-3 at this stage.

17-4 (b) Each offeror must:

17-5 (1) select or designate each engineer that is a member  
 17-6 of its team based on demonstrated competence and qualifications, in  
 17-7 the manner provided by Section 2254.004; and

17-8 (2) certify to the governmental entity that each  
 17-9 selection or designation was based on demonstrated competence and  
 17-10 qualifications, in the manner provided by Section 2254.004.

17-11 (c) The governmental entity shall qualify offerors to  
 17-12 submit additional information and, if the entity chooses, to  
 17-13 interview for final selection.

17-14 Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The  
 17-15 governmental entity shall select a design-build firm using a  
 17-16 combination of technical and cost proposals as provided by Section  
 17-17 2267.361.

17-18 Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND  
 17-19 COST PROPOSALS. (a) A governmental entity shall request proposals  
 17-20 from design-build firms identified under Section 2267.359(c). A  
 17-21 firm must submit a proposal not later than the 180th day after the  
 17-22 date the governmental entity makes a public request for the  
 17-23 proposals from the selected firms. The request for proposals must  
 17-24 include:

17-25 (1) a design criteria package;

17-26 (2) if the project site is identified, a geotechnical  
 17-27 baseline report or other information that provides the design-build  
 17-28 firm minimum geotechnical design parameters to submit a proposal;

17-29 (3) detailed instructions for preparing the technical  
 17-30 proposal and the items to be included, including a description of  
 17-31 the form and level of completeness of drawings expected; and

17-32 (4) the relative weighting of the technical and price  
 17-33 proposals and the formula by which the proposals will be evaluated  
 17-34 and ranked.

17-35 (b) The technical proposal is a component of the proposal  
 17-36 under this section.

17-37 (c) Each proposal must include a sealed technical proposal  
 17-38 and a separate sealed cost proposal.

17-39 (d) The technical proposal must address:

17-40 (1) project approach;

17-41 (2) anticipated problems;

17-42 (3) proposed solutions to anticipated problems;

17-43 (4) ability to meet schedules;

17-44 (5) conceptual engineering design; and

17-45 (6) other information requested by the governmental  
 17-46 entity.

17-47 (e) The governmental entity shall first open, evaluate, and  
 17-48 score each responsive technical proposal submitted on the basis of  
 17-49 the criteria described in the request for proposals and assign  
 17-50 points on the basis of the weighting specified in the request for  
 17-51 proposals. The governmental entity may reject as nonresponsive any  
 17-52 firm that makes a significant change to the composition of its firm  
 17-53 as initially submitted. The governmental entity shall subsequently  
 17-54 open, evaluate, and score the cost proposals from firms that  
 17-55 submitted a responsive technical proposal and assign points on the  
 17-56 basis of the weighting specified in the request for proposals. The  
 17-57 governmental entity shall select the design-build firm in  
 17-58 accordance with the formula provided in the request for proposals.

17-59 Sec. 2267.362. NEGOTIATION. After selecting the  
 17-60 highest-ranked design-build firm under Section 2267.361, the  
 17-61 governmental entity shall first attempt to negotiate a contract  
 17-62 with the selected firm. If the governmental entity is unable to  
 17-63 negotiate a satisfactory contract with the selected firm, the  
 17-64 entity shall, formally and in writing, end all negotiations with  
 17-65 that firm and proceed to negotiate with the next firm in the order  
 17-66 of the selection ranking until a contract is reached or  
 17-67 negotiations with all ranked firms end.

17-68 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental  
 17-69 entity shall assume:

18-1 (1) all risks and costs associated with:

18-2 (A) scope changes and modifications, as  
 18-3 requested by the governmental entity;

18-4 (B) unknown or differing site conditions unless  
 18-5 otherwise provided by the governmental entity in the request for  
 18-6 proposals and final contract;

18-7 (C) regulatory permitting, if the governmental  
 18-8 entity is responsible for those risks and costs by law or contract;  
 18-9 and

18-10 (D) natural disasters and other force majeure  
 18-11 events unless otherwise provided by the governmental entity in the  
 18-12 request for proposals and final contract; and

18-13 (2) all costs associated with property acquisition,  
 18-14 excluding costs associated with acquiring a temporary easement or  
 18-15 work area associated with staging or construction for the project.

18-16 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

18-17 (a) Unless a stipend is paid under Subsection (c), the  
 18-18 design-build firm retains all rights to the work product submitted  
 18-19 in a proposal. The governmental entity may not release or disclose  
 18-20 to any person, including the successful offeror, the work product  
 18-21 contained in an unsuccessful proposal. The governmental entity  
 18-22 shall return all copies of the proposal and other information  
 18-23 submitted to an unsuccessful offeror. The governmental entity or  
 18-24 its agents may not make use of any unique or nonordinary design  
 18-25 element, technique, method, or process contained in the  
 18-26 unsuccessful proposal that was not also contained in the successful  
 18-27 proposal at the time of the original submittal, unless the entity  
 18-28 acquires a license from the unsuccessful offeror.

18-29 (b) A violation of this section voids the contract for the  
 18-30 project entered into by the governmental entity. The governmental  
 18-31 entity is liable to any unsuccessful offeror, or any member of the  
 18-32 design-build team or its assignee, for one-half of the cost savings  
 18-33 associated with the unauthorized use of the work product of the  
 18-34 unsuccessful offeror. Any interested party may bring an action for  
 18-35 an injunction, declaratory relief, or damages for a violation of  
 18-36 this section. A party who prevails in an action under this  
 18-37 subsection is entitled to reasonable attorney's fees as approved by  
 18-38 the court.

18-39 (c) The governmental entity may offer an unsuccessful  
 18-40 design-build firm that submits a response to the entity's request  
 18-41 for additional information under Section 2267.361 a stipend for  
 18-42 preliminary engineering costs associated with the development of  
 18-43 the proposal. The stipend must be one-half of one percent of the  
 18-44 contract amount and must be specified in the initial request for  
 18-45 proposals. If the offer is accepted and paid, the governmental  
 18-46 entity may make use of any work product contained in the proposal,  
 18-47 including the techniques, methods, processes, and information  
 18-48 contained in the proposal. The use by the governmental entity of  
 18-49 any design element contained in an unsuccessful proposal is at the  
 18-50 sole risk and discretion of the entity and does not confer liability  
 18-51 on the recipient of the stipend under this subsection.

18-52 (d) Notwithstanding other law, including Chapter 552, work  
 18-53 product contained in an unsuccessful proposal submitted and  
 18-54 rejected under this subchapter is confidential and may not be  
 18-55 released unless a stipend offer has been accepted and paid as  
 18-56 provided by Subsection (c).

18-57 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following  
 18-58 selection of a design-build firm under this subchapter, the firm's  
 18-59 engineers shall submit all design elements for review and  
 18-60 determination of scope compliance to the governmental entity before  
 18-61 or concurrently with construction.

18-62 (b) An appropriately licensed design professional shall  
 18-63 sign and seal construction documents before the documents are  
 18-64 released for construction.

18-65 Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the  
 18-66 conclusion of construction, the design-build firm shall supply to  
 18-67 the governmental entity a record set of construction documents for  
 18-68 the project prepared as provided by Chapter 1001, Occupations Code.

18-69 Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A

19-1 performance or payment bond is not required for the portion of a  
 19-2 design-build contract under this section that includes design  
 19-3 services only.

19-4 (b) If a fixed contract amount or guaranteed maximum price  
 19-5 has not been determined at the time a design-build contract is  
 19-6 awarded, the penal sums of the performance and payment bonds  
 19-7 delivered to the governmental entity must each be in an amount equal  
 19-8 to the construction budget, if commercially available and  
 19-9 practical, as specified in the design criteria package.

19-10 (c) If the governmental entity awards a design-build  
 19-11 contract under Section 2267.362, the design-build firm shall  
 19-12 deliver the bonds not later than the 10th day after the date the  
 19-13 design-build firm executes the contract unless the design-build  
 19-14 firm furnishes a bid bond or other financial security acceptable to  
 19-15 the governmental entity to ensure that the design-build firm will  
 19-16 furnish the required performance and payment bonds before the  
 19-17 commencement of construction.

19-18 [Sections 2267.368-2267.400 reserved for expansion]

19-19 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

19-20 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,  
 19-21 "job order contracting" is a procurement method used for  
 19-22 maintenance, repair, alteration, renovation, remediation, or minor  
 19-23 construction of a facility when the work is of a recurring nature  
 19-24 but the delivery times, type, and quantities of work required are  
 19-25 indefinite.

19-26 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;  
 19-27 EXCEPTIONS. This subchapter applies only to a facility that is a  
 19-28 building, the design and construction of which is governed by  
 19-29 accepted building codes, or a structure or land, whether improved  
 19-30 or unimproved, that is associated with a building. This subchapter  
 19-31 does not apply to:

19-32 (1) a highway, road, street, bridge, utility, water  
 19-33 supply project, water plant, wastewater plant, water and wastewater  
 19-34 distribution or conveyance facility, wharf, dock, airport runway or  
 19-35 taxiway, drainage project, or related type of project associated  
 19-36 with civil engineering construction; or

19-37 (2) a building or structure that is incidental to a  
 19-38 project that is primarily a civil engineering construction project.

19-39 Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR  
 19-40 FACILITIES. (a) A governmental entity may award job order  
 19-41 contracts for the maintenance, repair, alteration, renovation,  
 19-42 remediation, or minor construction of a facility if:

19-43 (1) the work is of a recurring nature but the delivery  
 19-44 times are indefinite; and

19-45 (2) indefinite quantities and orders are awarded  
 19-46 substantially on the basis of predescribed and prepriced tasks.

19-47 (b) The governmental entity shall establish the maximum  
 19-48 aggregate contract price when it advertises the proposal.

19-49 (c) The governing body of a governmental entity shall  
 19-50 approve each job, task, or purchase order that exceeds \$500,000.

19-51 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental  
 19-52 entity may establish contractual unit prices for a job order  
 19-53 contract by:

19-54 (1) specifying one or more published construction unit  
 19-55 price books and the applicable divisions or line items; or

19-56 (2) providing a list of work items and requiring the  
 19-57 offerors to propose one or more coefficients or multipliers to be  
 19-58 applied to the price book or prepriced work items as the price  
 19-59 proposal.

19-60 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A  
 19-61 governmental entity may use the competitive sealed proposal method  
 19-62 under Subchapter D for job order contracts.

19-63 (b) The governmental entity shall advertise for, receive,  
 19-64 and publicly open sealed proposals for job order contracts.

19-65 (c) The governmental entity may require offerors to submit  
 19-66 information in addition to rates, including experience, past  
 19-67 performance, and proposed personnel and methodology.

19-68 Sec. 2267.406. AWARDED OF JOB ORDER CONTRACTS. The  
 19-69 governmental entity may award job order contracts to one or more job

20-1 order contractors in connection with each solicitation of  
 20-2 proposals.

20-3 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order  
 20-4 contract may be used to accomplish work only for the governmental  
 20-5 entity that awards the contract unless:

20-6 (1) the solicitation for the job order contract and  
 20-7 the contract specifically provide for use by other persons; or

20-8 (2) the governmental entity enters into an interlocal  
 20-9 agreement that provides otherwise.

20-10 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order  
 20-11 contract or an order issued under the contract requires  
 20-12 architectural or engineering services that constitute the practice  
 20-13 of architecture within the meaning of Chapter 1051, Occupations  
 20-14 Code, or the practice of engineering within the meaning of Chapter  
 20-15 1001, Occupations Code, the governmental entity shall select or  
 20-16 designate an architect or engineer to prepare the construction  
 20-17 documents for the project.

20-18 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a  
 20-19 job order contract may not exceed two years. The governmental  
 20-20 entity may renew the contract annually for not more than three  
 20-21 additional years.

20-22 Sec. 2267.410. JOB ORDERS. (a) An order for a job or  
 20-23 project under a job order contract must be signed by the  
 20-24 governmental entity's representative and the contractor.

20-25 (b) The order may be:

20-26 (1) a fixed price, lump-sum contract based  
 20-27 substantially on contractual unit pricing applied to estimated  
 20-28 quantities; or

20-29 (2) a unit price order based on the quantities and line  
 20-30 items delivered.

20-31 Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The  
 20-32 contractor shall provide payment and performance bonds, if required  
 20-33 by law, based on the amount or estimated amount of any order.

20-34 [Sections 2267.412-2267.450 reserved for expansion]

#### 20-35 SUBCHAPTER J. ENFORCEMENT

20-36 Sec. 2267.451. VOID CONTRACT. A contract, including a job  
 20-37 order, entered into in violation of this chapter is voidable as  
 20-38 against public policy.

20-39 Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This  
 20-40 chapter may be enforced through an action for declaratory or  
 20-41 injunctive relief filed not later than the 10th day after the date  
 20-42 on which the contract is awarded.

20-43 (b) This section does not apply to enforcement of a contract  
 20-44 entered into by a state agency. In this subsection, "state agency"  
 20-45 has the meaning assigned by Section 2151.002. The term includes the  
 20-46 Texas Facilities Commission.

20-47 SECTION 2.09. Section 252.048, Local Government Code, is  
 20-48 amended by adding Subsection (c-1) to read as follows:

20-49 (c-1) If a change order for a public works contract in a  
 20-50 municipality with a population of 500,000 or more involves a  
 20-51 decrease or an increase of \$100,000 or less, or a lesser amount as  
 20-52 provided by ordinance, the governing body of the municipality may  
 20-53 grant general authority to an administrative official of the  
 20-54 municipality to approve the change order.

20-55 SECTION 2.10. Section 271.054, Local Government Code, is  
 20-56 amended to read as follows:

20-57 Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before  
 20-58 the governing body of an issuer may enter into a contract requiring  
 20-59 an expenditure by or imposing an obligation or liability on the  
 20-60 issuer, or on a subdivision of the issuer if the issuer is a county,  
 20-61 of more than \$50,000, the governing body must:

20-62 (1) submit the proposed contract to competitive  
 20-63 procurement; or

20-64 (2) use an alternate method of project delivery  
 20-65 authorized by Chapter 2267, Government Code.

20-66 SECTION 2.11. Section 271.060, Local Government Code, is  
 20-67 amended by amending Subsection (b) and adding Subsection (c) to  
 20-68 read as follows:

20-69 (b) The total price of a contract may not be increased by a

21-1 change order unless provision has been made for the payment of the  
 21-2 added cost by the appropriation of current funds or bond funds for  
 21-3 that purpose, by the authorization of the issuance of certificates,  
 21-4 or by a combination of those procedures.

21-5 (c) A contract with an [The] original contract price of \$1  
 21-6 million or more may not be increased by more than 25 percent. If a  
 21-7 change order for a contract with an original contract price of less  
 21-8 than \$1 million increases the contract amount to \$1 million or more,  
 21-9 subsequent change orders may not increase the revised contract  
 21-10 amount by more than 25 percent. [The original price may not be  
 21-11 decreased by more than 25 percent without the consent of the  
 21-12 contractor.]

21-13 SECTION 2.12. Subchapter B, Chapter 223, Transportation  
 21-14 Code, is amended by adding Section 223.049 to read as follows:

21-15 Sec. 223.049. CONTRACT WITH LAND OWNER FOR IMPROVING ACCESS  
 21-16 TO LAND. (a) The department may, without complying with the  
 21-17 competitive bidding procedures of Subchapter A, contract with an  
 21-18 owner of land, including a subdivision, adjacent to a highway that  
 21-19 is part of the state highway system to construct an improvement on  
 21-20 the highway right-of-way that is directly related to improving  
 21-21 access to or from the owner's land.

21-22 (b) An owner that enters into a contract with the department  
 21-23 under this section must:

21-24 (1) comply with applicable department design and  
 21-25 construction standards;

21-26 (2) comply with all laws, rules, regulations, and  
 21-27 ordinances, including environmental requirements, that would be  
 21-28 applicable if the department were performing the work;

21-29 (3) execute a performance and payment bond in  
 21-30 accordance with Chapter 2253, Government Code; and

21-31 (4) make available for inspection by the department  
 21-32 all books and other records in the possession of the owner that are  
 21-33 related to the project.

21-34 (c) State and federal funds may not be used for the design,  
 21-35 development, financing, or construction of a highway improvement  
 21-36 under a contract described by this section.

21-37 ARTICLE 3. ADDITIONAL EXEMPTIONS

21-38 SECTION 3.01. Section 44.901, Education Code, is amended by  
 21-39 adding Subsection (j) to read as follows:

21-40 (j) Chapter 2267, Government Code, does not apply to this  
 21-41 section.

21-42 SECTION 3.02. Section 51.927, Education Code, is amended by  
 21-43 adding Subsection (k) to read as follows:

21-44 (k) Chapter 2267, Government Code, does not apply to this  
 21-45 section.

21-46 SECTION 3.03. Section 2166.406, Government Code, is amended  
 21-47 by adding Subsection (k) to read as follows:

21-48 (k) Chapter 2267 does not apply to this section.

21-49 SECTION 3.04. Chapter 302, Local Government Code, is  
 21-50 amended by adding Section 302.007 to read as follows:

21-51 Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW.  
 21-52 Chapter 2267, Government Code, does not apply to this chapter.

21-53 SECTION 3.05. Subchapter E, Chapter 335, Local Government  
 21-54 Code, is amended by adding Section 335.077 to read as follows:

21-55 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.  
 21-56 Chapter 2267, Government Code, does not apply to this chapter.

21-57 SECTION 3.06. Subchapter Q, Chapter 451, Transportation  
 21-58 Code, is amended by adding Section 451.8025 to read as follows:

21-59 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.  
 21-60 Chapter 2267, Government Code, does not apply to this subchapter.

21-61 SECTION 3.07. Subchapter C, Chapter 452, Transportation  
 21-62 Code, is amended by adding Section 452.1095 to read as follows:

21-63 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR  
 21-64 CERTAIN AUTHORITIES. (a) Chapter 2267, Government Code, does not  
 21-65 apply to an authority consisting of one subregion governed by a  
 21-66 subregional board created under Subchapter O.

21-67 (b) An authority to which this section applies may adopt  
 21-68 design-build procedures that do not materially conflict with  
 21-69 Subchapter H, Chapter 2267, Government Code.

22-1 SECTION 3.08. Section 60.401, Water Code, is amended by  
 22-2 adding Subsection (d) to read as follows:  
 22-3 (d) Chapter 2267, Government Code, does not apply to this  
 22-4 subchapter.

22-5 SECTION 3.09. Section 60.452(c), Water Code, is amended to  
 22-6 read as follows:

22-7 (c) Chapter 2267, [Subchapter J, Chapter 271, Local]  
 22-8 Government Code, does not apply to this subchapter.

22-9 ARTICLE 4. CONFORMING AMENDMENTS

22-10 SECTION 4.01. Section 252.021(a), Local Government Code, is  
 22-11 amended to read as follows:

22-12 (a) Before a municipality may enter into a contract that  
 22-13 requires an expenditure of more than \$50,000 from one or more  
 22-14 municipal funds, the municipality must:

22-15 (1) comply with the procedure prescribed by this  
 22-16 subchapter and Subchapter C for competitive sealed bidding or  
 22-17 competitive sealed proposals;

22-18 (2) use the reverse auction procedure, as defined by  
 22-19 Section 2155.062(d), Government Code, for purchasing; or

22-20 (3) comply with a method described by Chapter 2267,  
 22-21 Government Code [Subchapter H or J, Chapter 271].

22-22 SECTION 4.02. Section 252.022(d), Local Government Code, is  
 22-23 amended to read as follows:

22-24 (d) This chapter does not apply to an expenditure described  
 22-25 by Section 252.021(a) if the governing body of a municipality  
 22-26 determines that a method described by Chapter 2267, Government Code  
 22-27 [Subchapter H, Chapter 271], provides a better value for the  
 22-28 municipality with respect to that expenditure than the procedures  
 22-29 described in this chapter and the municipality adopts and uses a  
 22-30 method described in that subchapter with respect to that  
 22-31 expenditure.

22-32 SECTION 4.03. Sections 252.043(d-1) and (e), Local  
 22-33 Government Code, are amended to read as follows:

22-34 (d-1) A contract for construction of a project described by  
 22-35 Subsection (d) that requires an expenditure of \$1.5 million or less  
 22-36 may be awarded using the competitive sealed proposal procedure  
 22-37 prescribed by Subchapter D, Chapter 2267, Government Code [Section  
 22-38 271.116].

22-39 (e) If the competitive sealed bidding requirement applies  
 22-40 to the contract for construction of a facility, as that term is  
 22-41 defined by Section 2267.001, Government Code [Section 271.111], the  
 22-42 contract must be awarded to the lowest responsible bidder or  
 22-43 awarded under the method described by Chapter 2267, Government Code  
 22-44 [Subchapter H, Chapter 271].

22-45 SECTION 4.04. Sections 262.023(a) and (b-1), Local  
 22-46 Government Code, are amended to read as follows:

22-47 (a) Before a county may purchase one or more items under a  
 22-48 contract that will require an expenditure exceeding \$50,000, the  
 22-49 commissioners court of the county must:

22-50 (1) comply with the competitive bidding or competitive  
 22-51 proposal procedures prescribed by this subchapter;

22-52 (2) use the reverse auction procedure, as defined by  
 22-53 Section 2155.062(d), Government Code, for purchasing; or

22-54 (3) comply with a method described by Chapter 2267,  
 22-55 Government Code [Subchapter H, Chapter 271].

22-56 (b-1) A county that complies with a method described by  
 22-57 Chapter 2267, Government Code [Subchapter H, Chapter 271], as  
 22-58 provided by Subsection (a)(3), to enter into a contract for which  
 22-59 payment will be made through anticipation notes authorized by  
 22-60 Chapter 1431, Government Code, may not issue anticipation notes for  
 22-61 the payment of that contract in an amount that exceeds the lesser  
 22-62 of:

22-63 (1) 20 percent of the county's budget for the fiscal  
 22-64 year in which the county enters into the contract; or

22-65 (2) \$10 million.

22-66 SECTION 4.05. Section 1002.110, Special District Local Laws  
 22-67 Code, is amended to read as follows:

22-68 Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the  
 22-69 construction of public works, the district has all of the powers and

23-1 duties conferred on a municipality under Chapter 2267, [Subchapter  
 23-2 H, Chapter 271, Local] Government Code, with respect to the  
 23-3 construction of a facility. To the extent of any conflict, this  
 23-4 section prevails over any other law relating to the construction of  
 23-5 public works engaged in by the district.

23-6 SECTION 4.06. Section 1024.105(b), Special District Local  
 23-7 Laws Code, is amended to read as follows:

23-8 (b) The board may act as a governmental entity under Chapter  
 23-9 2267, [Subchapter H, Chapter 271, Local] Government Code, for  
 23-10 purposes of using the procurement procedures authorized by that  
 23-11 chapter. For purposes of this subsection, notice under Section  
 23-12 2267.052(c), [271.112(d), Local] Government Code, must be provided  
 23-13 by the district in the same manner as provided for a conservation  
 23-14 and reclamation district created under Section 59, Article XVI,  
 23-15 Texas Constitution.

23-16 SECTION 4.07. Section 366.185(d-1), Transportation Code,  
 23-17 is amended to read as follows:

23-18 (d-1) The rules adopted under Subsection (d) may not  
 23-19 materially conflict with the design-build procedures provided by  
 23-20 Subchapter H, Chapter 2267, [Subchapter J, Chapter 271, Local]  
 23-21 Government Code, and shall provide materially similar injunctive  
 23-22 and declaratory action enforcement rights regarding the improper  
 23-23 disclosure or use of unique or nonordinary information as provided  
 23-24 in that subchapter.

23-25 SECTION 4.08. Section 370.314(b), Transportation Code, is  
 23-26 amended to read as follows:

23-27 (b) Procedures adopted under Subsection (a) may not  
 23-28 materially conflict with the design-build procedures provided by  
 23-29 Subchapter H, Chapter 2267, [Subchapter J, Chapter 271, Local]  
 23-30 Government Code.

23-31 SECTION 4.09. Sections 460.406(c) and (d), Transportation  
 23-32 Code, are amended to read as follows:

23-33 (c) The board of directors may authorize the negotiation of  
 23-34 a contract without competitive sealed bids or proposals if:

23-35 (1) the aggregate amount involved in the contract is  
 23-36 \$25,000 or less;

23-37 (2) the contract is for construction for which not  
 23-38 more than one bid or proposal is received;

23-39 (3) the contract is for services or property for which  
 23-40 there is only one source or for which it is otherwise impracticable  
 23-41 to obtain competition;

23-42 (4) the contract is to respond to an emergency for  
 23-43 which the public exigency does not permit the delay incident to the  
 23-44 competitive process;

23-45 (5) the contract is for personal or professional  
 23-46 services or services for which competitive bidding is precluded by  
 23-47 law;

23-48 (6) the contract, without regard to form and which may  
 23-49 include bonds, notes, loan agreements, or other obligations, is for  
 23-50 the purpose of borrowing money or is a part of a transaction  
 23-51 relating to the borrowing of money, including:

23-52 (A) a credit support agreement, such as a line or  
 23-53 letter of credit or other debt guaranty;

23-54 (B) a bond, note, debt sale or purchase, trustee,  
 23-55 paying agent, remarketing agent, indexing agent, or similar  
 23-56 agreement;

23-57 (C) an agreement with a securities dealer,  
 23-58 broker, or underwriter; and

23-59 (D) any other contract or agreement considered by  
 23-60 the board of directors to be appropriate or necessary in support of  
 23-61 the authority's financing activities;

23-62 (7) the contract is for work that is performed and paid  
 23-63 for by the day as the work progresses;

23-64 (8) the contract is for the purchase of land or a  
 23-65 right-of-way;

23-66 (9) the contract is for the purchase of personal  
 23-67 property sold:

23-68 (A) at an auction by a state licensed auctioneer;

23-69 (B) at a going out of business sale held in

24-1 compliance with Subchapter F, Chapter 17, Business & Commerce Code;  
24-2 or

24-3 (C) by a political subdivision of this state, a  
24-4 state agency, or an entity of the federal government;

24-5 (10) the contract is for services performed by blind  
24-6 or severely disabled persons;

24-7 (11) the contract is for the purchase of electricity;  
24-8 or

24-9 (12) the contract is one awarded for alternate project  
24-10 delivery under Subchapters E, F, and G, Chapter 2267, [Sections  
24-11 271.117-271.119, Local] Government Code.

24-12 (d) For the purposes of entering into a contract authorized  
24-13 by Subsection (c)(12), an authority is considered a "governmental  
24-14 entity" as described [~~defined~~] by Section 2267.002, [271.111,  
24-15 Local] Government Code.

ARTICLE 5. REPEALER

SECTION 5.01. The following are repealed:

24-17 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,  
24-18 44.039, 44.040, and 44.041, Education Code;

24-19 (2) Sections 2166.2511, 2166.2526, 2166.2531,  
24-20 2166.2532, 2166.2533, and 2166.2535, Government Code;

24-21 (3) Subchapters H and J, Chapter 271, Local Government  
24-22 Code; and

24-23 (4) Section 431.101(e), Transportation Code.

ARTICLE 6. TRANSITION; EFFECTIVE DATE

24-24 SECTION 6.01. (a) The changes in law made by this Act apply  
24-25 only to a contract or construction project for which a governmental  
24-26 entity first advertises or otherwise requests bids, proposals,  
24-27 offers, or qualifications, or makes a similar solicitation, on or  
24-28 after the effective date of this Act.

24-29 (b) A contract or construction project for which a  
24-30 governmental entity first advertises or otherwise requests bids,  
24-31 proposals, offers, or qualifications, or makes a similar  
24-32 solicitation, before the effective date of this Act is governed by  
24-33 the law as it existed immediately before the effective date of this  
24-34 Act, and that law is continued in effect for that purpose.

24-35 SECTION 6.02. This Act takes effect September 1, 2011.  
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